



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

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DALLAS, TEXAS 75202 – 2733

JUN 8 2017

Mr. Larry Dominguez  
Chair  
New Mexico Water Quality Control Commission  
P.O. Box 5469  
Santa Fe, NM 87502

RE: New Mexico 2013 Triennial Revisions to 20.6.4 NMAC

Dear Mr. Dominguez:

I am writing in response to Butch Tongate's letter requesting review and action on revisions to New Mexico's *Standards for Interstate and Intrastate Surface Waters* 20.6.4 New Mexico Administrative Code (NMAC). These revisions became effective on March 2, 2017, and were submitted by the New Mexico Water Quality Control Commission for the U.S. Environmental Protection Agency's (EPA) review via letter dated March 14, 2017, as required under federal regulations at 40 CFR §Part 131.5. The revised water quality standards (WQS) were submitted to EPA with an attorney's statement certifying that the revised WQS were adopted pursuant to the laws of the State of New Mexico. EPA received the WQS submission on March 20, 2017.

I am pleased to inform you that in today's action, EPA is approving the majority of the new and/or revised provisions as detailed in **Section II** of the enclosed Technical Support Document (TSD) pursuant to CWA §303(c) and its implementing regulations at 40 CFR Part 131. The EPA has determined that although some of the revisions to these provisions may be non-substantive, they are approved pursuant to CWA §303(c) and its implementing regulations at 40 CFR Part 131. Please be advised that EPA is not approving the New Mexico water quality standards for those waters or portions of waters located in Indian Country, as defined in 18 U.S.C. § 1151.

The EPA has determined that no action should be taken on two provisions as detailed in **Section III** of the TSD pursuant to CWA §303(c) and its implementing regulations at 40 CFR Part 131. First, no EPA action is required for 20.6.4.16 – Planned Use of a Piscicide. Although the amended provision has been retained in the state's WQS, the provision is not intended as a regulatory requirement. Consistent with its prior 2006 action, EPA has determined that the amended provision represents state implementation procedures for the use of a piscicide for restoration efforts, but is not a WQS subject to review under CWA Section 303(c). This means that the state may use the procedures as intended for restoration efforts in state waters. Secondly, the EPA has also determined that it does not have adequate information to take action on amended designated uses for the Chino Mines Smelter Tailings Soils Investigation Unit waters specified in 20.6.4.97. C. (6)(b)(ii)-(iv) or associated criteria in 20.6.4.808 and 809 NMAC– Closed Basins and Water Effect Ratios (WER). This decision does not mean the use determinations or WER calculations for these waters cannot be supported, but that additional information is needed to support the conclusions concerning the highest attainable use for these waters consistent with federal regulations at 40 CFR 131.10(g). Please note that these provisions are not effective for CWA purposes unless and until approved by EPA as specified at 40 CFR §131.21(c).

The approval of some portions of the new and revised WQS identified in the TSD are subject to the results of consultation under Section 7(a)(2) of the Endangered Species Act (ESA). The EPA is approving specific aquatic life criteria and supporting criteria revisions contained in the submittal, pending the completion of consultation with the U.S. Fish and Wildlife Service (USFWS) under Section 7(a)(2) of the Endangered Species Act (ESA). EPA initiated informal consultation with the Service on these revisions by letter dated March 21, 2017 (enclosed). Although EPA has not yet completed consultation with USFWS, EPA's approval of these new and revised water quality standards is fully consistent with Section 7(d) of the ESA because it does not foreclose either the formulation by USFWS or the implementation by the EPA of any alternatives that might be determined in the consultation to be needed to comply with Section 7(a)(2). EPA has authority to take additional action regarding the revision of the New Mexico WQS if the consultation with USFWS identifies deficiencies in the revised WQS requiring remedial action by EPA, after EPA has approved the revisions.

I would like to commend the Commission, New Mexico Environment Department and Surface Water Quality Bureau for their commitment and hard work in reviewing and revising the state's WQS. We look forward to working with you to resolve the outstanding issues related to this triennial review. If you have any questions or concerns, please contact me at (214) 665-7101, or have your staff contact Russell Nelson at (214) 665-6646.

Sincerely,



William K. Honker, P.E.

Director

Water Division

Enclosure

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